S.B. CIVIL WRIT PETITION NO.6420/2003

Murti Bhagwan Parasnath Digamber Jain Mandir
VS
Bhag Chand & Ors.

DATE OF ORDER: 21.3.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Manish Shishodia, for the petitioner.
Mr. A.K.Acharya, for the respondent.

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Heard learned counsel for the parties.

The petitioner is aggrieved against the order dated 26.8.2003 by which the petitioner's application for seeking relief of amendment in plaint was rejected by the trial court on the ground that by amendment, the plaintiff's legal identity will be changed, therefore, the amendment cannot be allowed. The trial court rejected the another amendment on the ground that plaintiff submitted the suit on 12.1.2001 and defendant submitted sale deed for registration before the registering authority on the same day on 12.1.2001 and since the petitioner-plaintiff did not disclose when the possession was handed over to the purchasers and has not given some facts in detail, therefore, the petitioner is not entitled to amend the pleading.

According to learned counsel for the petitioner, the court has committed serious error of law in observing that the petitioner-plaintiff is seeking to substitute the plaintiff whereas in fact, the petitioner filed the suit in the name of the trust and during the pendency of the suit, the said trust was registered with the different name only. It is not a case of change of identity, but at the most, it can be said to be devolution of interest during the pendency of the suit. If not, it is a case of change in the name of the original plaintiff only. In either case, the court should not have refused the amendment of change of cause title.

Learned counsel for the respondent supported the order of the trial court by saying that there is change in name, therefore, there is change in identity also. It is also submitted that the purchaser from the respondent-defendant took possession and, therefore, the trial court was right in rejecting the application.

I considered the submissions of learned counsel for the parties and perused the reasons given in the order dated 26.8.2003. At the outset it may be said that the trial court proceeded under absolutely mis-assumption of law rather could not appreciate the facts of the case, despite recording the fact that plaintiff is seeking amendment in the

cause title on the basis of the plea that after filing of the suit, the trust was registered by them and, therefore, there is necessity of the amendment and by that only they submitted that the original property was belonging to one trust and that was not registered at the time of filing of the suit and it was got registered subsequently and therefore, only there is a change in the name of the plaintiff. The erstwhile trust (named) has no conflicting interested with the newly constituted registered trust (change in name only and getting it registered), therefore, the reasons given by the trial court cannot be said to be in consonance with any of the legal provision.

The reason given by the trial court for rejecting another prayer of the petitioner is also very strange. Assuming for the sake of argument that the purchaser from the non-petitioner-defendant took possession of the property before the date of filing of the suit even then the trial court should not have rejected the amendment of the plaintiff seeking relief of possession as limitation for recovery of possession is 12 years and not a few minutes or hours only. This is admitted case of the plaintiff and the defendant that the suit was filed on 12.1.2001 and the documents evidencing the sale of the property was executed on the same day or even if it is on prior date, but was presented before the registering authority on 12.1.2001, the trial court even did not examine

whether the date of presentation of the document before the Sub-Registrar is relevant when the document is of third party and not the party effected by the deed in question as a beneficiary or transferor.

In view of the above, the writ petition of the petitioner is allowed and the order of the trial court dated 26.8.2003 cannot be sustained, hence set aside. The application filed by the plaintiff for amendment is allowed. The trial court is directed to decide the suit expeditiously.

(PRAKASH TATIA), J.

c.p.goyal/-.